

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Mr. Amos Tracy Shea)

Shea's Farm Center)

UST Facility ID No. 22346-009-011717)

Hayden, Blount County, Alabama)

**PROPOSED
ADMINISTRATIVE ORDER**

No. _____

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

1. Amos Tracy Shea is the registered owner of a regulated underground storage tank (UST) facility located at Shea's Farm Center, 13575 Highway 160, Hayden, Blount County, Alabama, designated as ADEM Facility I.D. Number 22346-009-011717.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.

4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).

5. Based upon an inspection dated May 9, 2011 of the UST facility and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

7. The Owner accepted delivery of a regulated substance to an underground storage tank facility that was under delivery prohibition.

8. A Notice of Delinquency (NOD) dated January 24, 2011, was issued by the Department requiring the owner/operator to provide spill catchment basin tests, results of corrosion protection test, a passing 0.2 gallon per hour leak test printout for each tank from the automatic tank gauge and outstanding regulatory fees.

9. On February 25, 2011, upon the Owner's failure to respond to the NOD dated January 24, 2011, the Department issued a Notice of Violation (NOV) requiring the owner to submit spill catchment basin tests, results of corrosion protection test, a passing 0.2 gallon per hour leak test printout for each tank from the automatic tank gauge and outstanding regulatory fees.

10. On April 4, 2011, upon the Owner's failure to respond to the NOD dated January 24, 2011, the NOV dated February 25, 2011, the Department issued a Notice of Proposed Delivery Prohibition for failure to submit spill catchment basin tests, a passing 0.2 gallon per hour leak test printout for each tank from the automatic tank gauge and outstanding regulatory fees.

11. On May 4, 2011, the Department placed the facility on delivery prohibition.

12. On May 9, 2011, a Department inspection revealed that the facility had received fuel on May 4, 2011 while still on delivery prohibition.

13. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl.Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner/Operator did not ensure that the facility was not on delivery prohibition. The violations impede the Department's regulatory authority over

USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Operator does not have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

G. Other Factors: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Accepted unauthorized delivery to a facility on delivery prohibition	\$0 - \$25,000

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the effective date of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

B. That, within thirty days of the effective date of this Administrative Order the Owner shall provide to the Department a cathodic protection test, which shall include documentation of any repairs made to the cathodic protection system by a certified cathodic protection system tester.

C. That, should any provisions of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

E. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

F. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the _____ day of _____, 2011.

Lance R. LeFleur
Director

ATTACHMENT A

Penalty Calculation Worksheet

Amos Tracy Shea
13575 Hwy. 160
Hayden, AL 35079
Shea's farm Center
22346-009-011717

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.45(3) states that it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to a UST facility that is under delivery prohibition.	1	\$2,500	\$2,500	\$0
Totals:	1	\$2,500	\$2,500	\$0

Economic Benefit*: \$0

Mitigating Factors*: \$0

Ability to Pay*: \$0

Other Factors*: \$0

Total Civil Penalty: \$5,000

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

JUL 19 2011

CERTIFIED MAIL 91 7108 2133 3935 0354 5288

Mr. Amos Tracy Shea
Shea's Farm Center
13575 Highway 160
Hayden, Alabama 35079

PROPOSED ADMINISTRATIVE ORDER

Re: **Shea's Farm Center**
13575 Highway 160
Hayden Blount County, Alabama
UST Facility ID No. 22346-009-011717

Dear Mr. Shea:

A review by ADEM has found your underground storage tank (UST) facility listed above in violation of state and federal law as set out in the enclosed document. The Department has determined that the alleged violations warrant the issuance of an administrative order requiring you to take actions to bring your facility into compliance.

Please review the enclosed "proposed" Administrative Order. This Order is not final, and we will provide you with an opportunity to present evidence and show cause why it should not be made final. If you wish an opportunity to respond to the allegations contained in the proposed Order, **please provide a written response no later than 5:00 p.m. on August 2, 2011.** Your response should be sent to me at the above Montgomery address.

In drafting your response, please direct your attention to each of the "Findings" in the proposed Order and provide any facts or arguments which you believe are relevant to the alleged violations. Also, provide any additional facts which you believe may mitigate the effect of the violations or explain why the violations occurred.

You will note that the Department has made an initial determination that the assessment of a civil penalty is appropriate in this case. In determining the amount of the civil penalty, the Department is required to consider the following six factors:

1. The seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public.
2. The standard of care manifested by the alleged violator.
3. The economic benefit which delayed compliance may confer upon the alleged violator.
4. The nature, extent and degree of success of the alleged violator's efforts to minimize or mitigate the effects of such violation upon the environment.
5. The alleged violator's history of previous violations.
6. The ability of the alleged violator to pay a penalty.

Mr. Amos Tracy Shea
Shea's Farm Center
Page Two

In arriving at the civil penalty proposed in the draft order, the Department has considered those factors to the extent that such information is available to us. Your response will provide information that will assist us in determining if a civil penalty is warranted and, if so, if the amount proposed is appropriate. Unless evidence to the contrary is presented, the Department assumes the ability to pay a civil penalty, and that an economic benefit has been derived from the failure to comply with applicable regulations. To assist you in preparing your response, please be advised that the following information which addresses the six penalty factors should be included:

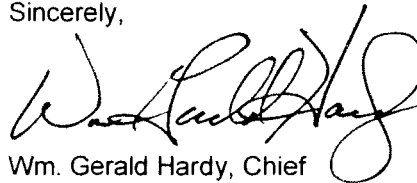
1. Procedures which are followed by the facility which are designed to prevent violations from occurring, including handbooks, training manuals, inspection logs and/or schedules, operation and maintenance procedures and/or schedules, affidavits, etc.
2. Discussion of previous violations and the facility's response to those violations.
3. The past 3 years' tax returns and associated schedules and a current financial statement (only necessary if you wish to claim an inability to pay a civil penalty).
4. Any other information which you believe the Department should consider in making a penalty determination.

Please also review the requirements contained in the "Order" portion of the proposed Order. If certain actions cannot be accomplished within the time proposed or alternative actions would be preferable, please provide suggested changes and reasons why such changes are appropriate.

If you wish an opportunity to meet with our staff for an informal conference to discuss the alleged violations, **please contact me no later than 5:00 p.m. on August 2, 2011, to schedule a meeting.** If you fail to request a conference by that time, we will base our final action concerning the proposed Administrative Order upon the evidence we have before us, including your written response. **If we do not receive a written response from you by August 2, 2011,** the Department will place the proposed Order on public notice for comments. Proposed Orders are subject to a 30-day public notice and comment period. Upon completion of the public notice period, the Department will enter the appropriate final order which may reflect changes pursuant public comments. **Payment of the civil penalty ordered is due within 45 days of the order's effective date.**

Should you have any questions concerning this matter, please contact Mr. Lee Davis, Chief of the UST Compliance Unit, in Montgomery at (334) 271-7759.

Sincerely,



Wm. Gerald Hardy, Chief
ADEM Land Division

Mr. Amos Tracy Shea
Shea's Farm Center
Page Three

WGH/SSM/LD/ATC/rh

Enclosure

cc: Sonja M. Massey, Chief
ADEM Groundwater Branch, Land Division

Lee Davis, Chief
UST Compliance Unit, Groundwater Branch

ADEM Office of General Counsel



Date: 07/22/2011

Ragan Harrison:

The following is in response to your 07/22/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3935 0354 5288. The delivery record shows that this item was delivered on 07/21/2011 at 01:03 PM in HAYDEN, AL 35079. The scanned image of the recipient information is provided below.

Signature of Recipient:

re
Josh Best
Josh Best

Address of Recipient:

13525 Hwy 160

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service